

REMARKS

The present communication is responsive to the official action mailed April 12, 2005.

The undersigned and Ms. Kelly Hwang wish to express appreciation for the courtesy extended by the examiner during the telephone interview on May 27, 2005. During the interview, the undersigned and Ms. Hwang discussed with the examiner the proposed claims in view of the newly cited prior art.

At that interview, applicants discussed most of the amendments submitted herein, principally those focusing on amending the claims in a manner which redefined the groups R<sup>8</sup> and R<sup>11</sup>. Applicants did not discuss with the examiner the other amendment found in the independent claims wherein the specified salt-forming anions have been removed to a dependent claim. However, none of the rejections were predicated on the nature of the salt-forming anion and applicants believe that the claims, in view of all the amendments, are allowable.

Claims 1-22 were pending in the application. Of the above claims, claims 1-2, 8-9 and 17-22 have been cancelled, and claims 3-7, 10-14 and 16 have been amended. New claims 23-34 have been added. These amendments and additions are supported throughout the present disclosure, and, in particular, for example, at from page 52, line 25 to page 56, line 10 (¶¶ 215-222). No new matter is therefore included therein.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. For the reasons discussed herein, applicants respectfully traverse the examiner rejections, and requests the examiner to reconsider patentability of the pending claims based on the amendments and arguments herein.

**Rejection Under 35 U.S.C. 112**

The examiner rejected claims 1-22 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the written description on the ground that if R<sup>8</sup> and R<sup>11</sup> can be "anything," as argued by applicants in the response to the first office action, then it does not "enable any person skilled in the art . . . to make or use the invention commensurate in scope with these claims." (See 4/12/05 Office Action, at page 2.)

Although applicants respectfully submit that a person skilled in the art would readily understand the metes and bounds of the previously presented claims 1-22 when read in light of the specification and the prior art, in order to expedite prosecution, applicants amended the claims by limiting R<sup>8</sup> and R<sup>11</sup> to be "alkyl, alkylhydroxy, alkyl amido, alkylaryl amido or alkylhydroxy amido group" consistent with the disclosure in the specification on page 13, lines 22-25, ¶45.

In addition, the examiner rejected claims 17-22 under 35 U.S.C. § 112, first paragraph, for allegedly inserting new subject matter "which was not described in the specification" on the ground that the examiner "cannot find basis in the specification for limitation that R<sup>8</sup> and R<sup>11</sup> are of 16 carbons or greater." (See 4/12/05 Office Action, at page 2.)

Applicants respectfully submit that the phrase "R<sup>8</sup> and R<sup>11</sup> are . . . C<sub>16</sub> or greater" is fully supported by the disclosure in the specification at page 17, lines 3-4, ¶57. Nonetheless, applicants have cancelled claims 17-22, rendering this rejection moot.

**Rejection Under 35 U.S.C. § 102(b)**

The examiner cited three separate allegedly anticipatory references, JP 60-81376, *International Cosmetic Ingredient Dictionary and Handbook* and Nakama et. al (U.S. Patent

No. 4,919,846), and rejected claims 1-22 under 35 U.S.C. § 102(b) as allegedly being anticipated by each of the above-mentioned references. Applicants have cancelled claims 1-2, 8-9 and 17-22 as discussed during the telephonic interview.

With respect to claims 3-7 and 10-16, applicants respectfully traverse the § 102(b) rejection. To establish a *prima facie* case of anticipation under Section 102(b), each and every element as set forth in the claim must be either expressly or inherently described in a single prior art reference and the identical invention must be shown in as complete detail as is contained in the claims.

Claims 3-7, as amended, are directed to a composition comprising a mixture of dialkyl imidazoline quats wherein at least 30% of R<sup>8</sup> and R<sup>11</sup> are alkyl groups of at least 19 carbons in length, and claims 10-16 are directed to a cosmetic or personal care product comprising a mixture of dialkyl imidazoline quats wherein at least about 30% of R<sup>8</sup> and R<sup>11</sup> are alkyl groups of at least *19 carbons in length*.

As stated in applicants' prior declaration beef tallow typically contains about 4.4% C<sub>14</sub>, 31.9% C<sub>16</sub>, 2.1% C<sub>17</sub> and 60.8% C<sub>18</sub> fatty acid substituents (see 3/2/05 Declaration of Mr. Pereira, at page 4.) It does not contain at least 30% of or longer C<sub>19</sub> fatty acid substituent.

Because the cited references fail to teach each and every element as set for in all of the pending claims either expressly or inherently (i.e., R groups are alkyl groups of at least 19 carbons in length), applicants respectfully request the examiner to review and withdraw the rejection under 35 U.S.C. § 102(b).

#### Rejection Under 35 U.S.C. 103(a)

The examiner rejected claims 1-22 under 35 U.S.C. § 103(a) as allegedly being unpatentable over JP 60-81376 in view of

applicants' admissions. While applicants disagree, applicants have cancelled claims 1-2, 8-9 and 17-22, as discussed during the telephonic interview.

With respect to claims 3-7 and 10-16, applicants respectfully traverse the § 103(a) rejection. To establish a *prima facie* case of obviousness under Section 103, the references relied upon for rejection must suggest the entirety of the claimed invention and, hence, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

As stated in the 4/23/05 office action, the examiner's position is that the cited references exemplify the "use of compositions with R groups derived from beef tallow . . . . Accordingly the R group limitations appear to be met." (*Id.*, at page 5.) However, the amended and new claims of the present application are generally directed to a mixture of dialkyl imidazoline quats with R groups derived from sources more rich in longer chain substituents such as HEAR oil (see Specification, page 54, ¶0219) wherein R<sup>8</sup> and R<sup>11</sup> are alkyl groups of at least 19 carbons or 21 carbons in length.

Therefore, because the JP 60-81376 reference in view of applicants' admissions fails teach or suggest all of the claim limitations (i.e., R groups are alkyl groups of at least 19 carbons or 21 carbons in length), applicants respectfully request the examiner to review and withdraw the rejection under 35 U.S.C. § 103(a) based on the JP 60-81376 reference.

As it is believed that all of the rejections set forth in the official action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the examiner does not believe that such action can be taken at this time, it is respectfully requested that he/she telephone applicants' attorney at (908)

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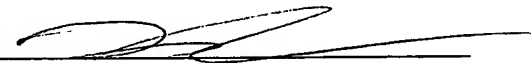
654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: July 11, 2005

Respectfully submitted,

By



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